

**FILED**

April 15, 2010

**NEW JERSEY STATE BOARD  
OF MEDICAL EXAMINERS**

STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
STATE BOARD OF MEDICAL EXAMINERS

In the Matter of:

BENJAMIN LEVINE, M.D.

ORDER ENTERING  
SUMMARY DECISION

This matter was opened before the New Jersey State Board of Medical Examiners (the "Board") upon the Attorney General's filing of an Administrative Complaint on January 4, 2010, seeking the entry of an Order suspending or revoking the license of respondent Benjamin Levine, M.D., to practice medicine and surgery in the State of New Jersey. The complaint is predicated upon respondent's conviction, following a trial, in the Superior Court of New Jersey, Criminal Division, on five counts of a criminal indictment, to include findings of criminal guilt of:

- the Unlicensed Practice of Medicine, in the Third Degree, in violation of N.J.S.A. 2C:21-20.
- Insurance Fraud, in the Third Degree, in violation of N.J.S.A. 2C:21/4.6 for knowingly making a false, fictitious, fraudulent or misleading statement of material fact on his application to renew a medical malpractice insurance policy;
- Falsifying Records, in the Fourth Degree, in violation of N.J.S.A. 2C:21-4(a), for falsifying his application to renew a medical malpractice insurance policy;
- Theft by Deception, in the Second Degree, in violation of N.J.S.A. 2C:20-4, for unlawfully and purposely obtaining by deception over \$75,000 from the U.S. Department of Health and Human Services, Center for

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Medicare and Medicaid Services, CMS and/or United Healthcare and/or Aetna, and/or Horizon Blue Cross/Blue Shield, and/or Connecticut General Life Insurance Company and/or Mutual of Omaha Insurance Co. From July 1, 2003 through December 31, 2005; and

- Falsifying Records, in the Fourth Degree, in violation of N.J.S.A. 2C:21-4(a), by submitting a renewal application for registration under the Controlled Substance Act knowing that it contained false statements or information.

While the Complaint recites that respondent was convicted on all five counts listed above, the present action against Dr. Levine is based only on the last two cited charges (that is, Theft by Deception and the Falsifying Records charge related to his submission of a false application for registration under the Controlled Substance Act).<sup>1</sup> Those convictions, and the underlying conduct established by those convictions, are alleged to provide bases for Board action pursuant to N.J.S.A. 45:1-21(b) (use of dishonesty, fraud, deception and/or misrepresentation), 45:1-21(e) (professional or occupational misconduct), 45:1-21(f) (conviction of crimes of moral turpitude and/or relating adversely to the practice of medicine) and 45:9-6 (failure to demonstrate good moral character).

Respondent filed an answer to the Complaint on January

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The Attorney General is not seeking penalty in this action based on the first three convictions, as she instead states in the filed complaint that the Board previously relied upon the conduct underlying those three convictions when entering a prior Order, on March 14, 2007, denying Dr. Levine's application for reinstatement and continuing the suspension of his license.

21, 2010. Within his answer, respondent conceded that "it is a fact that the jury found this physician guilty," but then proceeded to collaterally attack the validity of the verdict, claiming, among other items, that the evidence did not support the verdict, that the verdict was the product of prosecutorial errors, and that the conviction of theft by deception was improper based on independent conduct of Dr. Levine's medical-claims employee.

Following the filing of respondent's answer to the complaint, the Attorney General filed a motion, on February 8, 2010, seeking the entry of summary decision on the complaint. The motion was supported by a certification of D.A.G. Hafner, to which were appended documents evidencing respondent's criminal conviction, and a supporting brief. Respondent submitted two letters (dated February 12, 2010 and February 24, 2010) generally opposing the application for entry of summary decision. He thereafter submitted a third letter, dated April 6, 2010, to which he appended an 11 page statement he described as constituting "the entire argument and mitigating factors that the Medical Board must understand prior to the Board making its final decision on the penalties to be assessed."

This matter was set down for hearing before the Board on April 14, 2010.<sup>2</sup> The parties were advised, in a letter dated March

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The matter was initially scheduled to be heard on March 10, 2010, however was then adjourned, at respondent's request, to afford him an opportunity to seek the entry of an Order authorizing

30, 2010, that the Board would conduct the hearing in a bifurcated fashion - first considering whether to grant or deny the motion for summary decision and then (in the event summary decision were to be granted) conducting a hearing to determine penalty, at which hearing respondent would be afforded an opportunity to present evidence for the Board to consider in mitigation of penalty.

On April 14, 2010, Deputy Attorney General Doreen Hafner appeared for the Attorney General. Respondent did not appear at the hearing, as he is presently incarcerated in Middlesex County and his motion for entry of an Order granting him temporary release from prison to attend the Board Hearing was denied within an Order filed by the Honorable Lorraine Pullen, J.S.C. on April 7, 2010. At the hearing, Deputy Attorney General Hafner offered oral argument in support of her motion for summary decision, and entered into evidence copies of the Superseding Indictment entered in the matter of State of New Jersey v. Benjamin Levine (setting forth the eight counts on which respondent was indicted) [P-1 in evidence] and of a portion of the transcript from the criminal trial on November 6, 2009 (setting forth the jury's pronouncement of verdict on the charges against Dr. Levine) [P-2 in evidence].

We unanimously conclude that good cause exists to support the entry of an Order granting the Attorney General's motion for

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his temporary release from incarceration to attend the Medical Board hearing.

summary decision. Simply put, there is no issue of material fact that need be resolved in this matter. Respondent was convicted, after a criminal trial, on all five counts of criminal conduct detailed above. Indeed, respondent does not contest the fact that he was convicted - rather, his Answer, and the letters that he has submitted thereafter, all seek to question or attack the validity of the convictions rather than the fact of the convictions.

In this case, therefore, it is clear that there is no genuine issue of material fact and that the Attorney General is entitled to prevail as a matter of law. See Contini v. Bd. of Ed. of Newark, 286 N.J. Super. 106 (App. Div. 1995), certif. denied 145 N.J. 372 (1996). Respondent was found guilty of the criminal charges detailed above following an eleven day criminal trial. A criminal conviction conclusively establishes the underlying facts in a subsequent professional disciplinary proceeding. In re Coruzzi, 98 N.J. 77 (1984). Despite his efforts to do so, respondent may not seek to re-litigate his criminal guilt in proceedings before this Board. In re Fanelli, 174 N.J. 165, 180 (2002).

Within his final submission to the Board (dated April 6, 2010), respondent requested that the Board delay making a final decision in this matter until after April 26, 2010 (a date on which he asserts the Superior Court will entertain his motion for a new trial). While we declined to delay consideration of the motion for

summary decision on April 14, 2010, we will grant respondent's request and adjourn the scheduled date for holding the mitigation hearing in this matter to June 9, 2010. In doing so, we explicitly recognize that respondent's license to practice medicine in New Jersey remains presently suspended, by operation of our Order denying reinstatement and continuing suspension of license, filed on March 14, 2007.<sup>3</sup>

WHEREFORE, it is on this 15 day of April, 2010

ORDERED:

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That Order provided, in paragraph 2, that "respondent's license is and shall continue to be suspended in the State of New Jersey, until such time as further Order of the Board may be entered in this matter." Review of the Board's records reveals that respondent in fact has sought leave for reinstatement of license, and, in connection therewith, appeared before a Committee of the Board on October 22, 2008. Following that appearance, respondent was advised in a letter dated December 8, 2008, that the Board would not grant his application for reinstatement until he first completed an assessment of his skills by an assessment entity acceptable to the Board [respondent was advised that the Board would accept an assessment conducted either by the Colorado Personalized Education for Physicians' Program ("CPEP") or the Comprehensive Health Professional Assessment Program conducted by the University of California - San Diego ("UC-SD")].

Respondent has since requested that the Board consider allowing him to demonstrate his proficiency by means other than completing an assessment at CPEP or UC-SD. To date, none of the proposals he has submitted have been found to be acceptable by the Board, as none have been demonstrated to be of comparable scope and rigor to the assessment which would otherwise be provided by CPEP or UCSD.

Accordingly, it is the case that there have been no further Orders entered by the Board subsequent to March 14, 2007, and respondent's license therefore continues to be presently suspended.

The Attorney General's motion for entry of an Order granting summary decision on all charges within the Complaint filed in this matter on January 4, 2010 is hereby granted in full.

The Board will conduct a hearing to determine penalty, at which hearing the Board will consider any evidence presented by respondent in mitigation, on June 9, 2010.<sup>4</sup> A supplemental Order assessing penalty in this case will thereafter be entered.

NEW JERSEY STATE BOARD  
OF MEDICAL EXAMINERS

By: Paul T. Jordan *scj*  
Paul T. Jordan, M.D.  
Board Vice-President

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4

The Board has requested that the parties supply a copy of the transcript of the criminal trial in advance of the scheduled mitigation hearing, so that (if deemed necessary) the Board may review the transcript or such portions thereof that may be relevant to a determination of the appropriate penalty to be imposed in this matter. Additionally, should sentencing on respondent's criminal conviction occur prior to June 9, 2010, the Board requests that the parties supplement the record with details regarding sentencing, to include any transcripts of court proceedings on sentencing.